

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-013746

02/01/2017

HONORABLE LORI HORN BUSTAMANTE

CLERK OF THE COURT  
T. Nosker  
Deputy

JOSEPH MOMOT, et al.

KRYSTLE DELGADO

v.

SILKWORTH MANOR L L C, et al.

SCOTT R WEINER  
TIMOTHY M COLLIER  
JOHN MULLIGAN  
5701 E CACTUS RD  
SCOTTSDALE AZ 85254

MINUTE ENTRY

The court has considered the oral arguments presented as well as the following pleadings:

- Plaintiff's Motion for Partial Summary Judgment
- Plaintiff's Statement of Facts in Support of Motion for Summary Judgment
- Defendants' Response to Plaintiff's Motion for Summary Judgment and Cross Motion for Summary Judgment on the Breach of Contract and Breach of Covenant of Good Faith Claims and Unjust Enrichment Claims
- Defendants' Separate Statement of Facts and Defendants' Supplemental Statement of Facts in Response to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment
- Plaintiff's Reply in Support of Plaintiff's Motion for Partial Summary Judgment
- Plaintiff's Separate Statement of Facts

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- Plaintiff's Controverting Statement of Facts in Response to Defendants' Separate Statement of Facts in Support of Their Motion for Partial Summary Judgment
- Defendants' Motion for Summary Judgment on All Defendants and Remaining Claims in Complaint
- Defendants' Separate Statement of Facts and Defendants' Supplemental Statement of Facts in Response to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment
- Plaintiff's Response to Defendants' Motion for Summary Judgment on All Defendants and Remaining Claims in Complaint
- Plaintiff's Separate Statement of Facts
- Plaintiff's Controverting Statement of Facts in Response to Defendants' Separate Statement of Facts in Support of Their Motion for Partial Summary Judgment
- Reply Brief to Plaintiff's Response to Defendant(s) Motion for Summary Judgment on All Defendants and Remaining Claims in Complaint

Pursuant to Ariz. R. Civ. P. 56(a), "[t]he court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." "[T]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [its] favor." *Sanchez v. City of Tucson*, 191 Ariz. 128, 130, ¶ 7, 953 P.2d 168, 170 (1998). "It is only the existence of uncontroverted competent evidence favorable to a movant, from which only one inference can be drawn, that entitles a party to summary judgment." *Nemec v. Rollo*, 114 Ariz. 589, 592, 562 P.2d 1087, 1090 (App. 1977) (citing *Choisser v. State ex rel. Herman*, 12 Ariz.App. 259, 469 P.2d 493 (1970)).

Plaintiff seeks summary judgment on the Breach of Contract and the Breach of the Covenant of Good Faith and Fair Dealing. Defendants seek summary judgment on all counts. There are genuine issues of material fact that will have to be determined by the trier of fact. These issues include but are not limited to what services were rendered pursuant to the contract, whether services and amenities stated in the contract were provided and whether the alleged infractions and subsequent termination from the program were in line with the agreement of the parties. These issues along with other issues are hotly contested as evidenced, in part, by Plaintiff's 92 page Controverting Statement of Facts. For these reasons, the court is unable to grant summary judgment on the various counts as requested by Plaintiffs and Defendants.

However, it is uncontroverted that Defendant Silkworth Institute D.O. was not in existence at the time Joey Momot entered into his agreement. (*See Defendant's Statement of Facts* ¶ 101 and *Plaintiff's Controverting Statement of Facts* pp. 86-88 failing to controvert ¶ 101.) Therefore, the court will grant summary judgment as to Defendant Silkworth Institute D.O. ONLY and dismiss this entity from the lawsuit.

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**IT IS ORDERED** denying Plaintiff's Motion for Summary Judgment.

**IT IS FURTHER ORDERED** denying Defendants' Cross Motion for Summary Judgement on the Breach of Contract and Breach of Covenant of Good Faith Claims and Unjust Enrichment Claims.

**IT IS FURTHER ORDERED** granting Defendant Silkworth Institute D.O. Motion for Summary Judgment and dismissing them from the lawsuit. Defendant Silkworth Institute D.O. shall bear their own attorney fees. This entity should have requested dismissal at the inception of the case.

**IT IS FURTHER ORDERED** denying all other aspects of Defendants' Motion for Summary Judgment on All Defendants and Remaining Claims in Complaint.